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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT TACOMA

11 BRIAN J. NIEDERMIER,

12 Plaintiff,

13 v.

14 MICHAEL J. ASTRUE, Commissioner of  
15 Social Security Administration,

16 Defendant.

No. CASE NO. C07-5224 BHS

REPORT AND  
RECOMMENDATION

Noted for August 21, 2009

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18 This matter has been referred to Magistrate Judge J. Richard Creatura pursuant to 28  
19 U.S.C. § 636(b)(1)(B) and Local Magistrates Rule MJR 4(a)(4) and as authorized by Mathews,  
20 secretary of H.E.W. v. Weber, 423 U.S. 261 (1976).

21 Plaintiff, acting on his own behalf, brought this action pursuant to 42 U.S.C. § 405(g)  
22 seeking judicial review of a final decision of the Commissioner of Social Security denying his  
23 application for social security benefits.

24 Plaintiff Brian Niedermier currently resides in Port Angeles, Washington. On or about  
25 May 5, 2007, Mr. Niedermier submitted to the Court Clerk a civil complaint along with an  
26 application to proceed *in forma pauperis*. The court granted the application and the Complaint

1 was filed thereafter. The Complaint names Michael Astrue of the Social Security Administration  
2 as the sole defendant, and it alleges the Administration failed to properly consider Plaintiff's  
3 application for social security benefits. Doc. 3.

4 After defendant filed his answer, the parties filed briefs and the Honorable J. Kelley  
5 Arnold issued a report and recommendation. Judge Arnold recommended that the matter be  
6 remanded to the administration to consider new and material evidence pursuant to sentence-six  
7 (to ensure ongoing jurisdiction over the matter). On January 2, 2008, the Court adopted the  
8 recommendation and remanded the matter. Doc. 19.

10 On November 14, 2008, Defendants presented a motion to re-open the matter.  
11 Defendants stated that the administration had considered the new evidence and the record was  
12 complete. Doc. 22. Accordingly, the matter was ultimately referred to the undersigned  
13 magistrate judge, and the parties, specifically Mr. Neidermier, have been provided a briefing  
14 schedule to raise particular issues and submit arguments in support of their respective positions.  
15 Plaintiff has been provided with no less than two extensions of time to file his opening brief.  
16 Docs. 27 & 29. The court explained in its most recent order that plaintiff must file an opening  
17 brief no later than June 22, 2009, otherwise the court would recommend summary dismissal for  
18 lack of prosecution. Doc. 29. To date, the clerk has not received any pleadings or documents  
19 from plaintiff responding to the court orders requiring an opening brief.

21 Because Plaintiff has not filed an opening brief, despite being given more than one  
22 opportunity to do so, the undersigned recommends that the Court dismiss the matter without  
23 prejudice for lack of prosecution.  
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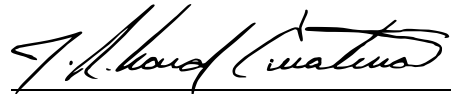
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1 CONCLUSION

2 Based on the foregoing discussion, the Court should dismiss this matter without prejudice  
3 for failure to prosecute. Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules  
4 of Civil Procedure, the parties shall have ten (10) days from service of this Report to file written  
5 objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those  
6 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the  
7 time limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on  
8 August 21, 2009, as noted in the caption.  
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10 DATED at this 30<sup>th</sup> day of July, 2009.

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13 J. Richard Creatura  
14 United States Magistrate Judge  
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